

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: CERTAINTEED FIBER CEMENT
SIDING LITIGATION**

Ann Hocutt, et al. v. CertainTeed Corporation, et al.,)	
W.D. Arkansas, C.A. No. 5:12-05010)	MDL No. 2270
Steve Hardig, et al. v. CertainTeed Corporation, et al.,)	
W.D. North Carolina, C.A. No. 3:11-00535)	

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiffs in actions in the Western District of Arkansas (*Hocutt*) and the Western District of North Carolina (*Hardig*) and two defendants in *Hocutt* – TK&S Specialty and Lakewood Homes LLC – move to vacate our respective orders that conditionally transferred the actions to MDL No. 2270. Common defendant CertainTeed Corp. (CertainTeed) opposes the motions.

Moving plaintiffs and defendants do not significantly dispute that their actions share questions of fact concerning alleged defects in CertainTeed Weatherboard fiber cement siding with actions pending in MDL No. 2270. These parties instead base their arguments against transfer primarily on an alleged lack of federal jurisdiction over the actions (though plaintiffs’ motion to remand was denied in *Hardig* during the pendency of the current motion to vacate) and the inconvenience transfer may cause to certain parties. Plaintiffs and moving defendants in *Hocutt* can present their motions for remand to the transferee judge.¹ See, e.g., *In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F.Supp. 2d 1346, 1347-48 (J.P.M.L. 2001). Moreover, the Panel repeatedly has held that, while transfer of a particular action might inconvenience some parties to that action, such a transfer is often necessary to further the expeditious resolution of the litigation taken as a whole. See, e.g., *In re Crown Life Ins. Premium Litig.*, 178 F.Supp. 2d 1365, 1366 (J.P.M.L. 2001). Because Section 1407 transfer concerns pretrial proceedings only, most parties generally need not travel to the transferee district. Any deposition of plaintiffs or defendants will likely take place in their home district. See generally Fed.R.Civ.P. 45(c).

* Judge John G. Heyburn II did not participate in the decision of this matter.

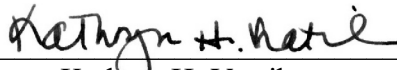
¹ Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court wishing to rule upon the remand motion generally has adequate time in which to do so.

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After considering all argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2270, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for reasons set out in our order directing centralization, and holding that the Eastern District of Pennsylvania was an appropriate Section 1407 forum for actions sharing factual questions concerning alleged defects in WeatherBoards Fiber Cement exterior siding products manufactured and marketed by CertainTeed. *In re: CertainTeed Fiber Cement Siding Prods. Liab. Litig.*, 802 F.Supp.2d 1369 (J.P.M.L. 2011). Both actions involve allegations regarding CertainTeed Weatherboard fiber cement siding's propensity to prematurely fail due to inherent defects in the siding's formulation and, thus, clearly fall with the MDL's ambit. Specifically, like the MDL plaintiffs, plaintiffs in the two actions cite as problematic the inclusion of fly ash instead of grain and silica in the fiber cement mixture, which in turn leads to excessive moisture absorption by the siding.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Pennsylvania and, with the consent of that court, assigned to the Honorable Thomas J. O'Neill, Jr., for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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